

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-284

July 16, 1999

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of RFP Pursuant
To Chapter 307

ORDER APPROVING BANGOR
HYDRO-ELECTRIC COMPANY'S
PROPOSED REQUEST FOR
BID PACKAGE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

Summary

This Order grants approval of Bangor Hydro-Electric Company's (BHE) proposed request for bids package (RFB) as filed on June 11, 1999 and subsequently modified by BHE's filing on June 18, 1999, with an additional modification described and ordered herein. The Order also grants waivers from certain requirements of Chapter 307 necessitated by the approval of the RFB.

Background

On April 30, 1999, BHE filed a proposed RFB in accordance with Chapter 307 of the Commission's rules. The purpose of the RFB is to solicit proposals for the purchase of BHE's entitlements to capacity and energy from the Penobscot Energy Recovery Company waste-to-energy facility; the West Enfield hydro-electric facility; the Pumpkin Hill Power Company hydro-electric facility; the Milo Hydro Company hydro-electric facility; the Green Lake Water Power Company hydro-electric facility and the Sebec Hydro Company hydro-electric facility. Pursuant to 35-A M.R.S.A. § 3204(4), BHE must sell its entitlements to the output of any generating asset it does not divest unless the Commission determines that the output of a specified asset is necessary for it to perform in an efficient manner, or unless the Commission grants an extension of the date by which an entitlement must be sold in order to reduce a utility's stranded costs.¹

¹The Commission previously found that the diesel-fired generating units in Bar Harbor and Eastport owned by BHE are necessary for BHE to perform in an efficient manner, and granted an exemption from the divestiture requirement for these units pursuant to 35-A M.R.S.A. § 3204(1). The Commission also, pursuant to 35-A M.R.S.A. § 3204(3), extended the deadline for BHE to divest its diesel-fired generating units in Medway until March 1, 2003, based upon a finding that an extension would be likely to improve their sale value. Order Approving Stipulation, Docket No. 98-820, (Feb. 3, 1999). BHE has not yet requested nor received an extension of the requirement that it sell its entitlement to any capacity and energy produced by these diesel units. Based on discussions with the Company, I presume the necessary requests will be filed shortly.

Section 6(B)(3) of Chapter 307 governs the review and approval process for a utility's proposed RFB package, and includes a delegation of the Commission's approval authority to the Director of Technical Analysis. On May 27, 1999, the Acting Director of Technical Analysis issued a letter in accordance with section 6(B)(3) of the rule that identified various issues raised by BHE's filing. Subsequently, staff and BHE discussed these issues, and, on June 11, 1999, BHE submitted a revised RFB. BHE also provided with the June 11 filing, requests for waivers from certain requirements of Chapter 307. Section 11 of Chapter 307 allows the Commission, the Director of Technical Analysis, or a presiding officer to, for good cause, waive any requirement of the rule not required by statute.

Discussion

BHE will use this RFB process to sell its entitlements to approximately 38 MW of generating capacity and the associated energy. The capacity and energy is provided by existing purchased power contracts between BHE and six individual qualifying facilities. These six contracts reflect all of BHE's rights to capacity and energy remaining after February 29, 2000, except for: (1) the output of diesel units that the Commission has found necessary for BHE to perform efficiently or for which BHE has been granted an extension from divestiture pursuant to 35-A M.R.S.A. § 3204(3); and (2) 6 MW of capacity and the associated energy from PERC that BHE states is already committed to be sold under a pre-existing agreement with Unitil.²

Pursuant to the process outlined in BHE's proposed RFB, bidders for the capacity and energy entitlements would have broad flexibility to fashion their bids. For example, the RFB would invite bidders to propose changes to any aspect of the standard Power Sales Agreement. Bidders could also group the assets however they wish, and could submit bids for terms of any duration equal to or longer than 2 years.

It seems likely that, by giving bidders such broad flexibility, BHE would have to apply a greater degree of judgment in negotiation and bid evaluation than would be the case without such flexibility. BHE's approach could also increase the complexity of determining the best bids compared to a process with less flexibility. For example, BHE may have to quantify the values of various contract terms so that bids can be measured against one another on a comparable basis.

BHE asserts that flexibility will produce bids of greater value. This could occur, for example, if particular terms in the Power Sales Agreement are highly valued by a bidder, or if a bidder places high value on a longer purchase term or particular asset grouping.

² BHE has not yet requested nor received an exemption or extension of the requirements that it: (1) divest its Unitil sales obligation; and (2) sell the entire PERC entitlement. Based on discussions with BHE, I presume the necessary requests will be filed shortly.

At this point, there is little basis to agree or disagree with BHE's assertion. Because this is the first such sale of a utility's capacity and energy entitlement, there is no empirical evidence on which to rely. Indeed, variations in approaches among utilities may provide insight into the relative advantages of various approaches and, thus, inform the Commission as to the best approach for subsequent sales.

There is a particular aspect of BHE's RFB, however, that requires modification. The RFB currently specifies delivery points for the entitlements as follows:

Facility	Location	Voltage
Green Lake Hydro	Mill Street Substation, Local 2	12.5kV
Sebec Hydro	Milo Substation, Local M12	13.2kV
Milo Hydro	Milo Substation	13.2kV
West Enfield Hydro	Stanford Substation	46.0kV
PERC	Orrington Substation	115kV
Pumpkin Hill Hydro	Stanford Substation, Enfield Local 1	12.5kV

Except for PERC and West Enfield, the above delivery points are on BHE's distribution system. This could require a purchaser to pay to wheel across BHE's distribution system in addition to its local transmission system. Because BHE currently does not have distribution wheeling rates established, bidders may substantially discount their bids based on their assessment of what they might ultimately have to pay for distribution wheeling, or bidders may not bid on the distribution-level entitlements at all. Thus, a preferable delivery point for the output of these facilities would appear to be BHE's transmission system, thereby allowing bidders to be unaffected by whatever distribution wheeling rates ultimately turn out to be.

Staff has discussed this issue with BHE. BHE has indicated its agreement with the approach described above whereby all the entitlements would be delivered to BHE's transmission system. Therefore, I direct the Company to modify its RFB to specify that the delivery point for the output of the Green Lake Hydro, Sebec Hydro, Milo Hydro, and Pumpkin Hill Hydro facilities will be on BHE's local transmission system.

With this modification, I will approve BHE's proposed RFB and grant the waivers from Chapter 307 as described below.

Specific Waivers

BHE has requested waivers from three specific provisions of Chapter 307. First, under BHE's proposed RFB, bidders could propose to purchase entitlements for terms longer than the 2-year period required by section 7(E) of Chapter 307. BHE states that such flexibility may attract higher bids for the entitlements. Bidders would also be required to submit a bid for the standard 2-year period.

Second, BHE proposes to leave open the treatment of damages flowing from a default by any of the generating facilities. Bidders could propose alternative treatments along with any other exception or change to the Power Sales Agreement. For PERC, BHE would also present an option to bidders whereby BHE would guarantee to the buyer a specified amount of capacity and energy at the negotiated prices. Because section 4(C) of Chapter 307 may be read to require the treatment of damages to be pre-specified, a waiver may be necessary to allow the treatment to be left open.

Third, BHE requests a waiver of section 7(D) of the rule that governs how the utility will determine winning bidders. BHE states that because bidders may propose changes to the terms of the Power Sales Agreement, it must maintain the flexibility to value such changes in comparing bids. Thus, a waiver of section 7(D) is necessary.

Fourth, although not requested by BHE, a waiver of section 6(B)(2)(d) appears necessary as well. Section 6(B)(2)(d) requires the utility to provide in the RFB the output of each generating facility by peak and off peak period. Because BHE does not meter the output of the small hydro facilities by time of day, it cannot comply with this requirement.

Finally, a waiver of the 60-day approval period requirement contained in section 6(B)(3) is also necessary. Additional time was needed to allow Staff and BHE to resolve issues informally.

The three waiver requests submitted by BHE are necessitated by the flexibility inherent its proposed RFB. As discussed above, BHE will be allowed the flexibility it seeks; thus good cause exists for the waivers. However, regarding BHE's request for a waiver of section 7(E), to allow bids for terms longer than 2 years, I note that granting the waiver does not imply that a longer term sale would ultimately be allowed, but only that bids for longer terms are not precluded. The waiver of section 6(B)(2)(d) also appears warranted to allow BHE to provide the output data from the small hydro facilities on a non-time differentiated basis, as does the waiver of 6(B)(3) to accommodate the informal resolution of issues.

Accordingly, it is

O R D E R E D

1. Bangor Hydro-Electric Company's revised proposed RFB package as filed on June 11, 1999 and updated and clarified by BHE's filing on June 18, 1999, and as further modified as described herein to reflect delivery points on BHE's transmission system is approved.

2. BHE's requests for waivers of the requirements of sections 7(E), 4(C) and 7(D) of Chapter 307, as described in this Order, are granted.

3. Section (6)(B)(2)(d) of Chapter 307 is waived as it pertains to time differentiation of the output of the Green Lake Water Power Company, Sebec Hydro Company, Milo Hydro Company and Pumpkin Hill Power Company facilities.

4. The 60-day approval period requirement contained in section 6(B)(3) of Chapter 307 is waived.

Dated at Augusta, Maine, this 16th day of July, 1999.

BY ORDER OF THE DIRECTOR OF TECHNICAL ANALYSIS

Faith Huntington
Acting Director of Technical Analysis